Because of the confusion that exists between the liabilities of a surety and guarantor, the decisions are not satisfactory. A possible argument against the holding of the principal case is as follows: The statute provides that no action shall be brought on a contract, unless within six years after the action accrues. Here was a guarantor of payment who became liable at the same time as the principal. That is to say, the action accrued against the guarantor when the principal made default. If the six years that have elapsed prevent a recovery against the principal, why do they not operate to the same effect in favor of a guarantor whose liability began precisely at the same time with that of the principal?

MASTER AND SERVANT—EXTRATERRITORIAL EFFECT OF STATUTE IMPOSING LIABILITY UPON MASTER FOR INJURY TO SERVANT.—Plaintiff's intestate was employed by the defendant, a Michigan firm, on board a tug. While in Canada he sustained an injury through the negligence of a fellow servant, which resulted in death. Plaintiff brought suit in Michigan, relying upon the Canadian statute which dispensed with the immunity of the employer from liability by reason of the fellow-servant rule. Had the injury occurred in Michigan, plaintiff would have no right of action. *Held*, that the plaintiff's rights were to be determined by the law of Canada. *Ricks* v. *Saginaw Bay Towing Co.* (1903), — Michigan —, 93 N. W. Rep. 632.

The general rule is that a foreign law, in cases other than penal actions, will be recognized by the courts of the state where the action is brought, provided the foreign law is not contrary to the public policy of such state. Some of the courts declare that the law of the forum, and the law of the place where the right of action accrued, must concur, in order to sustain the right of action. *Wooden* v. *Railway*, 126 N. Y. 10, 22 Am. St. Rep. 803; *Anderson* v. *Railway*, 37 Wis. 321. In *Taylor's Adm'r* v. *Penn. Co.*, 78 Ky. 348, 39 Am. Rep. 244; *Vawter* v. *Railway*, 84 Mo. 679, 54 Am. Rep. 105; and *Ash* v. *Railway*, 72 Md. 144, 20 Am. St. Rep. 461, the same rule was stated, but the question involved was the right of the administrator to bring suit, and it was held he could not. The courts have also differed in determining what constitutes a penal statute. In *Dale* v. *Railway*, 57 Kansas 601, 47 Pac. Rep. 521, the court refused to recognize a statute of New Mexico requiring railway companies to pay to the estate of any servant $5,000.00 for an injury resulting in death occasioned by the master's negligence. In *Bettys* v. *Railway*, 37 Wis. 323, the court refused to enforce a liability imposed by an Iowa statute, giving the plaintiff double damages for cattle killed in Iowa. In the principal case the reasoning of the court in *Herrick* v. *Railway*, 31 Minn. 11, 47 Am. Rep. 771, is approved and the decision followed. It is supported by the later decisions.

MASTER AND SERVANT—LIABILITY OF MASTER FOR INJURY TO SERVANT CAUSED BY DISOBEDIENCE OF MASTER'S ORDER.—A workman employed in defendant's colliery was suspended. In order to get out of the mine he had to go to the pit bottom and wait until the cage went up, which was three hours later. On his way down he stopped in a "pass-by" where the men were accustomed to eat their dinners. While waiting there he was ordered to go to the "pit bottom." Contrary to the order, he remained in the "pass-by" and was injured by the roof falling. The injury took place before he had an opportunity to get out of the mine, even if he had obeyed the order. *Held*, that the accident did not arise out of and in the course of his employment. *Smith* v. *Colliery Co.* (1903), 1 K. B. 204.

What disobedience of the servant terminates the employment is a difficult question. In *Lowe* v. *Pearson* (1899), 1 K. B. 261, a boy, whose duty was to

hand clay balls to the operator of a machine, and who was forbidden to touch the machine, attempted to clean it during the operator's absence, and was thereby injured. *Held*, that the injury did not arise in the course of his employment. In *Whitehead* v. *Reader* (1901), 2 K. B. 48, a carpenter, whose duty it was to sharpen tools upon a grindstone run by machinery, and who was forbidden to touch the machinery in any way, attempted to replace a belt and was injured. *Held*, that the accident arose out of and in the course of his employment. In *McElligott* v. *Randolph*, 61 Conn. 157, 29 Am. St. Rep. 181, a workman continued to work after ordered to stop for the day, and was injured. *Held*, that the master was liable. The courts are agreed that if the servant is acting within the scope of his employment and violates the order of the master, the latter is responsible; if outside of the scope of his employment, the master is not liable. The circumstances of each particular case must govern.

MORTGAGES—SUBSEQUENT PURCHASER—PRINCIPAL AND SURETY—EXTENSION OF TIME.—A mortgage executed by defendants on premises then owned by them, was extended by agreement of parties thereto in 1894 for three years. In 1895 defendants conveyed the premises to others, who assumed the mortgage debt. Such others in 1897 secured a further renewal, defendants not joining in the application therefor. Plaintiff brings this action to foreclose, and to secure a personal judgment against defendants. *Held*, that the extension of time to the grantee did not release the grantor from liability. *Iowa Loan & Trust Co.* v. *Haller* (1903), — Ia. —, 93 N. W. Rep. 636.

The defendant, maker of a mortgage note, conveyed his equity in the mortgaged property to a corporation, which assumed to pay the debt. The grantee agreed with the mortgagee to pay the debt, and secured from the mortgagee without consent of the maker, extensions of time for the payment of the debt. The mortgagee sues the maker of the note for a balance due after foreclosure of the mortgage by sale. *Held*, that the extension of time discharged the mortgagor. *Franklin Sav. Bank* v. *Cochrane* (1903), — Mass. —, 66 N. E. Rep. 200.

The two cases noted above will illustrate the divergence of views held by the courts as to the position which the original mortgagor holds towards the mortgagee after selling the mortgaged premises to a third party who has agreed to assume the mortgage debt. The Iowa and Connecticut courts stand practically alone on the ground that while as between themselves the grantor is the surety and the grantee the principal, yet as to the mortgagee, both are principals, and an extension of time to the grantee without the consent of the grantor does not relieve the latter from liability. *Corbett* v. *Waterman*, 11 Ia. 87; *Robertson* v. *Stuhlmiller*, 93 Ia. 326, 61 N. W. 986; *Boardman* v. *Larrabee*, 51 Conn. 39. See also *Teeters* v. *Lamborn*, 43 Ohio St. 144, 1 N. E. 513. Dicta of the Michigan and Missouri courts in *Crawford* v. *Edwards*, 33 Mich. 354, and *Mut. Ins. Co.* v. *Mayer*, 8 Mo. App. 18, to the same effect, have been overruled by later decisions in these states. *Metz* v. *Todd*, 36 Mich. 473; *Nelson* v. *Brown*, 140 Mo. 580, 41 S. W. 960. So that we may now say that these states are in accord with the great weight of authority, to the effect that where there has been an assumption of the mortgage debt by the grantee, the mortgagor stands in the relation of a surety to the mortgagee and is released by an extension of time to the grantee made without the mortgagor's consent. This is the doctrine laid down by the courts of New York, Maryland, Illinois, Kansas, Missouri, Nebraska, Massachusetts, Michigan, and the United States courts. *Fish* v. *Hayward*, 28 Hun, 456; *Spencer* v. *Spencer*, 95 N. Y. 353; *Paine* v. *Jones*, 76 N. Y. 274; *George* v. *Andrews*